UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Suedeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Northern Natural Gas Company Docket No. RP07-408-000

ORDER DENYING REQUEST FOR WAIVER

(Issued May 30, 2007)

1. On April 27, 2007, Northern Natural Gas Company (Northern) filed a request for waiver of the Commission's regulations to allow a permanent capacity release to be effective June 1, 2007. The Northern Municipal Distributors Group, the Midwest Region Gas Task Force Association, and the individual members of those groups (collectively, Distributors) protested the filing, arguing that Northern seeks authorization to release the capacity permanently to one of its customers without posting the capacity for competitive bids even though the proposed release is not at maximum rates.

2. As discussed below, the Commission denies Northern's request for a waiver to allow the permanent capacity release.

Description of the Filing

3. Northern states that, on February 1, 2007, it entered into a Service Agreement with Northwestern Corporation (Northwestern). According to Northern, the Service Agreement for transportation service to an ethanol plant in Northern's Operational Zone ABC owned by Redfield Energy, LLC (Redfield) provided for a discounted rate below Northern's current maximum tariff rate. Northern further states that Northwestern and Redfield have agreed that Northwestern will permanently release the discounted Service Agreement to Redfield, which will accept all the terms and conditions of the Service Agreement.

4. Northern asks the Commission to waive section 284.8(c), (d), and (e) of the Commission's regulations[1] to permit the prearranged discounted capacity release to be treated in a manner similar to the treatment of prearranged maximum rate releases, which can be implemented without posting for bids from other shippers and to allow the release

[1] 18 C.F.R. § 284.8(c), (d), (e) (2006).

to occur even though it is a release for less than Northern's maximum tariff rate. Northern maintains that the sole purpose for the release is to transfer capacity from one shipper that purchased the capacity to serve a particular market to another shipper that represents the same market. Northern asserts that the permanent capacity release will allow Redfield to receive the firm transportation service it needs to operate its ethanol plant. Moreover, continues Northern, the transaction between Northwestern and Redfield leaves Northern economically indifferent.

<u>Notice, Interventions, and Protest</u>

5. Notice of Northern's filing was issued on May 9, 2007. Interventions and protests were due as provided in section 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2006). Pursuant to Rule 214, 18 C.F.R. § 385.214 (2006), all timely filed motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Granting late intervention at this stage of the proceeding will not disrupt the proceeding or place additional burdens on existing parties.

6. In their protest, Distributors contend that the capacity release regulations are clear that, if a shipper does not want to post the capacity for competitive bid, the release must be at maximum rates. Distributors cite section 284.8(h)(1) of the Commission's regulations, which provides as follows:

> A release of capacity by a firm shipper to a replacement shipper for any period of 31 days or less, or for any term at the maximum tariff rate applicable to the release, need not comply with the notification and bidding requirements of paragraphs (c) through (e) of this section. A release under this paragraph may not exceed the maximum rate. Notice of a firm release under this paragraph must be provided on the pipeline's electronic bulletin board as soon as possible, but not later than forty-eight hours, after the release transaction commences.[2]

7. Thus, contend Distributors, if a release is not at the maximum tariff rate, the releasing shipper must comply with the following requirements, which require posting and bidding the capacity:

> (c) Except as provided in paragraph (h) of this section, a firm shipper that wants to release any or all of its firm capacity must notify the pipeline of the terms and conditions under which the shipper will release its capacity. The firm shipper must also notify the pipeline of any replacement shipper designated to obtain the released capacity under the terms and conditions specified by the firm shipper.

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[2] Distributors point out that Northern did not seek a waiver of this provision.

> (d) The pipeline must provide notice of offers to release or to purchase capacity, the terms and conditions of such offers, and the name of any replacement shipper designated in paragraph (b) of this section, on an Internet web site, for a reasonable period.
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> (e) The pipeline must allocate released capacity to the person offering the highest rate (not over the maximum rate) and offering to meet any other terms and conditions of the release. If more than one person offers the highest rate and meets the terms and conditions of the release, the released capacity may be allocated on a basis provided in the pipeline's tariff; provided however, if the replacement shipper designated in paragraph (b) of this section offers the highest rate, the capacity must be allocated to the designated replacement shipper.

8. Distributors further point out that Northern's currently-effective tariff is also explicit with respect to permanent releases and the requirement that they be at maximum rates to avoid having to post them for bids. According to Distributors, Tenth Revised Sheet No. 286 of Northern's tariff states as follows:

> The releasing Shipper may designate a prearranged release. A Shipper with a prearranged release for any term at maximum rates is exempt from the advance posting and bidding requirements. However, such Shipper must provide the terms of the release to Northern for informational posting.

9. According to Distributors, Redfield can continue to operate under its February 1, 2007 contract with Northwestern, which already provides Redfield the service it needs. Distributors also point out that, if Redfield wants to use a capacity release transaction to ensure that it will receive the capacity currently used by Northwestern to serve its needs, it can do so by agreeing to pay maximum rates for the permanent release of the capacity. Distributors argue that Redfield is in no different position than other shippers that find themselves in the position of having to pay maximum rates to ensure that they receive needed capacity and services. Moreover, continue Distributors, under the Commission regulations cites above, Redfield can be designated as a replacement shipper by Northwestern, and will be awarded the capacity if it bids the highest rates.

10. Distributors contend that Order No. 636-A emphasized that releasing shippers could not favor one type of shipper over other types of shippers. Distributors cite the following statement from Order No. 636-A:

> Releasing shippers may include in their offers to release capacity reasonable and non-discriminatory terms and conditions to accommodate individual release situations, including provisions for evaluating bids. All

> such terms and conditions applicable to the release must be posted on the pipeline's electronic bulletin board and must be objectively stated, applicable to all potential bidders, and non-discriminatory. *For example, the terms and conditions could not favor one set of buyers, such as end users of an LDC, or grant price preferences or credits to certain buyers.* The pipeline's tariff also must require that all terms and conditions included in offers to release capacity be objectively stated, applicable to all potential bidders, and non-discriminatory.[3]

11. Distributors also contend that Northern's request for a waiver lacks a great deal of supporting information. Distributors maintain that this raises the issue of whether Redfield could have obtained the capacity at a discount for itself in the first place, or whether this is simply a means for Redfield to obtain capacity at a discount that it could not have obtained otherwise from Northern on its own. Thus, contend Distributors, Northern has provided no basis for the requested waiver.[4]

12. In conclusion, Distributors submit that granting this waiver would set a dangerous precedent that permanent releases of capacity can be prearranged at discounted rates not available to other shippers, and without posting and bidding. Distributors claim that the requested waiver violates not only the letter, but the spirit of the capacity release program, which, among other things, is to place the capacity in the hands of those that value it most.

Discussion

13. The Commission's policy concerning capacity assignments, as reflected in 18 C.F.R. § 284.8, generally requires that the capacity assignments at less than the maximum tariff rates be subject to posting and bidding procedures to ensure that it will be assigned to the shipper who values it most. The Commission has granted waivers in situations where the shipper is exiting the natural gas business, or has been acquired by

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[3] *Pipeline Service Obligations and Revisions of Regulations Governing Self-Implementing Transportation, Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol and Order Denying Rehearing in Part, Granting Rehearing in Part, and Clarifying Order No. 636*, Order No. 636-A, FERC Stats. & Regs. Preambles (1991-1996) ¶ 30,950, at p. 30,557 (August 3, 1992) (emphasis supplied).

[4] In fact, state Distributors, Northern did not provide a copy of the current contract between Northwestern and Redfield, or a copy of the current contract between Northern and Northwestern, and further, Northern did not provide any information concerning the amount of capacity, delivery and receipt points, terms of the contract, or other pertinent information.

(or merged with) another company.[5] However, in the instant filing, Northern has not demonstrated circumstances that might warrant waiving the Commission's regulations or Northern's capacity release tariff provisions. Northern proposes to release capacity in a manner inconsistent with the Commission's regulations without disclosing the basis for the release or demonstrating that the release is in the public interest. In these circumstances, the Commission finds that Northern has failed to establish that the permanent release of the discounted capacity would not give Redfield preferential access to the released capacity. Accordingly, the Commission denies Northern's request for waiver. Northern may release the capacity on a prearranged basis, but only at the maximum rate; however, if it intends to release the capacity at the discounted rate, it must post the capacity released by Northwestern for competitive bidding consistent with section 284.8 of the Commission's regulations and the provisions of section 47 of Northern's General Terms and Conditions.

The Commission orders:

Northern's request for a waiver of the Commission's regulations to allow a prearranged permanent release of discounted capacity is denied as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

[5] *See e.g.*, *Tennessee Gas Pipeline Co.*, 111 FERC ¶ 61,509 at P 25 (2005); *Wyoming Interstate Company, Ltd.*, 110 FERC ¶ 61,325 at P 6 (2005); *Cheyenne Plains Gas Pipeline Company, L.L.C.*, 110 FERC ¶ 61,326 at P 5 (2005).